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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75–1678

FEDERAL POWER COMMISSION,
Petitioner

v.

MISSISSIPPI PUBLIC SERVICE COMMISSION, *et al.*

BRIEF AMICUS CURIAE ON BEHALF OF CITY OF WILLCOX AND ARIZONA ELECTRIC POWER COOPERATIVE, INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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July 14, 1976

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MISSISSIPPI PUBLIC SERVICE COMMISSION, *et al.*

BRIEF OF AMICI CURIAE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The City of Willcox, Arizona and Arizona Electric Power Cooperative, Inc. ("AEPCO"), oppose the granting of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case. Our purpose is to demonstrate that the Federal Power Commission ("FPC") seeks an advisory ruling upon an abstract question of law.

In the El Paso Natural Gas Company curtailment case (Docket No. RP72-6), AEPCO requested the FPC to hold a hearing on the issue of whether an electric utility having contractual and tariff rights to deliveries during periods of gas

shortage superior to those of other customers, which has been relegated to the lowest priority under a curtailment plan prescribed by the agency, is entitled to monetary compensation. The FPC refused to hold such hearings on the ground that it lacked jurisdiction. AEPCO brought this question before the United States Court of Appeals for the District of Columbia Circuit and it is presently pending decision in *City of Willcox and Arizona Electric Power Cooperative, Inc. v. FPC*, Nos. 74-2123, *et al.*

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 522 F.2d 1345. The subject order of the FPC and its order denying rehearing are not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on November 14, 1975. The FPC's petition for rehearing was denied on January 20, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Section 19(b) of the Natural Gas Act, 15 U.S.C. 717r(d).

QUESTIONS PRESENTED

1. Whether in prescribing or approving a curtailment plan for a pipeline, under the procedures of Sections 4 and 5 of the Natural Gas Act which require evidentiary hearings, the FPC lacks statutory jurisdiction to hold such a hearing for the purpose of considering the merits of a plan whereby electric utilities which have been forced to absorb, in the first instance, the entire economic burden of curtailment would receive monetary payments to compensate their customers for the higher cost of substitute fuels?

2. Whether this Court should review the judgment of the Court of Appeals, not yet final, holding only that electric

utilities are entitled to an evidentiary hearing on such a compensation plan where:

> (a) The agency does not base its alleged lack of statutory jurisdiction upon any provisions of the statute, but solely upon factual findings, which are wholly unsupported by any evidence, that the *consequences* of payments under a compensation plan would not be in the public interest; and
>
> (b) No specific plan of compensation has been proposed so that the agency is seeking an advisory ruling upon an abstract question of law.

STATUTES INVOLVED

Sections 1(b), 4(a) and (b), and 7(c) of the Natural Gas Act, 15 U.S.C. 717(b), 717c(a) and (b) and 717f(c) are set forth in the Petition for Certiorari. Sections 4(e) and 5(a) of the Act are set forth in the Appendix to this Brief.

REASONS WHY WRIT SHOULD NOT BE GRANTED

1. Petitioner claims that this case is of substantial importance to the administration of the Natural Gas Act because the effect of the Court of Appeals decision "would be to require a general restructuring of pipeline rates for sales of natural gas" (Pet., pp. 10, 12). But, the general level of just and reasonable rates for each pipeline, and the lawfulness of its rate structure, will not be affected at all by a compensation plan whereby the pipeline serves as a *mere conduit* to receive compensation payments from certain of its customers and to flow through such payments to other of its customers.

A rate subject to FPC jurisdiction is paid by an *immediate customer* purchasing directly from a pipeline. But, compensation payments are paid by *end users* purchasing

from state regulated distributors, and the pipeline simply flows through such payments to other state regulated distributors. Thus, *both FPC rates and the net revenues of the pipeline itself are wholly unchanged.*

2. Petitioner argues that the Court of Appeals decided the jurisdictional issue incorrectly because "the character and effect of compensation payments must control the determination of whether they are rates or surcharges" (Pet., p. 11). We agree that this is the test, but the FPC refuses to abide by the results of its application.

The FPC's basic thesis that compensation payments are rates or charges within the purview of Section 4(a) of the Act ignores the fact that that provision is limited to "rates and charges made, demanded, or received by a natural gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission". There is a vast difference between revenues received by the pipeline for its own services or for the gas it sells, which must be just and reasonable, on the one hand, and a surcharge such as a penalty payment for takes by a customer in excess of its daily or seasonal curtailment allotment, on the other hand. Only the former need be cost justified. The latter have not been, and never are, cost justified. On the contrary, they are designed to be at a sufficiently high noncost level to discourage customers from overrunning their curtailment allotments in order to escape the higher cost of substitute fuels by paying a cheaper penalty. The FPC with judicial approval has set these penalty payments at a level many times in excess of the cost of alternate fuels, which are themselves much more costly than natural gas sold by the pipelines.[1]

[1]Thus, in *United Gas Pipe Line Co.*, 50 FPC 1348 (1973), the FPC approved an increase in that pipeline's penalty from $3 to $10 per Mcf. Moreover, it made no attempt to justify this increase from a cost-related standpoint. Rather, it stated (*id.* at 1369): "In our opinion United is justified in increasing the penalty in view of the importance of curtailment programs today." In its Opinion (*id.*), the FPC noted and primarily relied upon the fact that other pipelines had already increased their overrun penalties to $10 per Mcf, which is many times the incremental cost of substitute fuels over natural gas. Although challenged in Court, this increased penalty was upheld as a proper exercise of the agency's discretion in view of the scarcity of natural gas and the emergency conditions brought about by its shortage. *Consolidated Gas Supply Corp. v. FPC*, 520 F.2d 1176, 1190 (D.C. Cir. 1975).

3. Petitioner also claims that this case is of substantial importance because if the Court of Appeals decided the jurisdictional issue incorrectly, much "unnecessary administrative and judicial litigation *over the merits of particular compensation schemes*" (Pet., p. 10, emphasis added) will be avoided. But, this is only true if, as Petitioner erroneously and falsely assumes, each of the different types of compensation plans has identical impact and modes of operation and therefore generates the same legal issues. Petitioner misleadingly groups all compensation plans presently pending in agency and Court proceedings as if they were of the same species and ignores the far-reaching and vital differences between them.

The question presented by the petition for certiorari involves a skeletal proposed type of plan whereby electric utilities would be compensated for the additional cost of substitute fuel they are compelled to use as a result of having been placed in the lowest priority of curtailment. C.A. App. 3.[2] *The compensation schemes involved in the proceedings cited by petitioners are of a wholly different type.*

The most frequent type arises from a voluntary agreement between the parties as part of an overall settlement of a curtailment case whereby all customers are curtailed in accordance with the agreed upon plan, but any customer who so desires is given the option of taking more than its curtailment allotment by paying to the pipeline a fixed sum for each excess Mcf of gas taken. The pipeline in turn flows

[2]"C.A. App." refers to the joint appendix filed with the Court of Appeals.

these compensation payments through to the individual customers who have surrendered a part of their curtailment allotment for the benefit of the payor. The Transcontinental Gas Pipe Line Corporation plan pending decision before the Court of Appeals for the District of Columbia, Nos. 74-2036, *et al.* and relied upon by the FPC as showing the importance of this case (Pet., p. 11) is of this type.

Another type involves compensation paid by those distributors who receive more than their *pro rata* share of gas under an end use plan, because they have a higher portion of high priority end uses in their total load than the average distributor served by the same pipeline, to distributors in the reverse situation who suffer more than *pro rata* curtailment. These compensation payments are made for the wholly different purpose of compensating the distributor for his loss of profits and affording protection to its customers against otherwise necessary rate increases. This type of plan has been proposed in several others of the administrative proceedings referred to by Petitioner (p. 10) such as in *Panhandle Eastern Pipeline Co.*, Docket No. RP71-119 and *Consolidated Gas Supply Corp.*, Docket No. RP73-115.[3] Still another type of compensation plan applies in this same situation but contemplates that the distributor will flow through the compensation to its curtailed customers, rather than retaining it for its own benefit or for the benefit of its customers being served. Such a plan was proposed in *Texas Gas Transmission Corp.*, Docket No. RP72-64,[4] and represents the only known detailed plan of the same general type as contemplated by MPSC here.

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[3]A variation on this theme has been proposed in *Southern Natural Gas Company*, Docket No. RP74-6, whereby the compensation would be paid to distributors who are curtailed below contract demand and by those receiving gas under interruptible contracts.

[4]This compensation plan has been withdrawn as part of a settlement presently pending before the FPC for approval.

4. In any event, the FPC plainly errs in its blithe and unsupported assumption that if compensation payments involve rates, the agency lacks jurisdiction. If sales for resale result from compensation plans, they can be certificated under Section 7 of the Act. Such plans can also be processed under the rate making authority of the agency in Sections 4 and 5 of the Act or under its Section 1(b) transportation and curtailment authority. Furthermore, in the analogous situation of overrun penalties for unauthorized takes in excess of a curtailment allotment, the FPC has interchangeably disposed of the issue in both curtailment and rate[5] proceedings. The crucial issue is whether compensation schemes are in the public interest or are, as the FPC claims, *unduly* discriminatory, contrary to Section 4(b) of the Act (Pet., p. 14). This is a question of *fact* which cannot be decided in an evidentiary vacuum. Yet, the FPC has determined that all types of compensation plans are equally unlawful because of the *unknown* practical consequences of their implementation. Since the agency has never held a hearing on the type of plan at issue here, it is clearly unable to determine the *actual consequences* of its operation.

The FPC circumvents this evidentiary gap by erroneously assuming that there is a one-to-one correspondence between compensation payments and curtailment priorities so that higher priority end users will pay money which will be transmitted by the intermediary distributor and pipeline customers in the jurisdictional chain of distribution to lower priority end users. It is solely on the basis of this erroneous assumption that the FPC concludes that different rates will be charged to similarly situated customers (Pet., p. 14). But, in the real world as the FPC well knows, its jurisdiction ends

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[5]The FPC's willingness to resolve penalty questions in rate cases, such as *United Gas Pipe Line Co.*, 50 FPC 1348 (1973), is noteworthy in light of its statement here (Pet., p. 13, note 6) that such penalties "must be filed as part of the curtailment tariff. . . ." Thus, the FPC's actual practice is not consistent with the rigid, technical position taken here.

when it sets the federal priorities for serving *end use requirements* reported to the pipeline concerned by its respective pipeline customers, distributor customers and direct industrial customers. The actual use of the gas at the burner tip is a matter entirely within the regulatory power of state and local public service commissions.[6] These State Commissions do not track the FPC's curtailment plan service priorities but, rather, prescribe inconsistent priorities of their own devising. By the same token, these State Commissions will also not track the FPC's curtailment priorities for the purpose of insuring that the high priority users supposed to pay compensation under a federal plan actually pay the compensation. They may decide that the compensation should be paid by industrial consumers who are classified in lower priorities under the state curtailment plan. Or, they may spread the compensation equally in proportion to gas volumes received among all ultimate consumers served by a state regulated distributor favored by a federal curtailment plan. Thus, the FPC simply does not know, and certainly cannot control, the matter of which ultimate consumers served by a favored distributor compelled to pay compensation will actually pay the monies needed to insure that part of the economic burden of curtailment is borne by *localities* who receive more than their pro rata share of gas under a federal curtailment plan. Plainly, the FPC's finding that there will be undue discrimination rests on a foundation of shifting quicksand. Nor does this finding even if justified, show lack

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[6] As the FPC held in *Arkansas Louisiana Power Co.*, 49 FPC 1316, 1317 (1973):

> We do not regulate "the local distribution of natural gas" (Section 1(b), Natural Gas Act). Therefore our curtailment priorities specified in Opinion No. 643-A apply to Arkla's sales for resale and, where there is no sale for resale, up to the point where local distribution begins. We do not undertake to order how gas is actually allocated on the distribution systems of Arkla or its customers.

Accord: Order Denying Motions for Reconsideration, Clarification or Modification of Order 467-B, 49 FPC 1036 (1973); Order Denying Motion to Terminate Proceeding, *El Paso Natural Gas Co.*, 48 FPC 371 (1972); *United Gas Pipe Line Co.*, 46 FPC 786 (1971).

of jurisdiction since it proves, at most, that compensation plans should be *rejected on their merits after statutory hearings.*

Furthermore, the FPC clearly lacks any evidentiary basis for a finding of *undue* discrimination since it does not know the level of the cents per Mcf contribution which will be required by ultimate consumers served by favored distributors. In practice, the spreading of such compensation payments among all customers of the favored distributor reduces them to a small fraction of the unit compensation per Mcf received. Here again, the determination of whether there is undue discrimination is a *factual matter,* and the FPC is attempting to substitute a conclusive and unwarranted presumption in order to escape an evidentiary hearing which, we submit, will demonstrate the fairness and lawfulness of certain compensation plans. The FPC's arbitrary and capricious procedure of treating as evidence "facts" which have not been introduced in a record or subject to cross-examination means that its order denying hearing here rests on mere administrative fiat. Such a practice has been condemned by this Court as a deprivation of statutory fair hearing and due process of law. *Ohio Bell Telephone Co. v. Public Utility Commission,* 301 U.S. 291, 300-305; *Interstate Commerce Commission v. Louisville and Nashville Railroad Co.,* 227 U.S. 88, 90-93.

5. The FPC's conclusion that a compensation scheme of the sort proposed by MPSC would tend to defeat the objectives of end use curtailment by financially penalizing high priority users and discouraging them from consuming natural gas is equally dependent upon incorrect and unsupported factual assumptions concerning the detailed method of operation and actual impact of compensation schemes—issues upon which no evidence has been received and no hearings have been held. Unless and until a particular end user is compelled to pay compensation in an amount which when added to the price he pays his distributor for natural gas equals or exceeds the cost of substitute fuels, compensation cannot serve as a financial disincentive for high

priority natural gas consumption. The question of whether compensation payments are too high and would have such an adverse impact upon particular end uses served by an individual distributor customer of United, unless lowered, is a *question of fact* to be determined in the very hearing the FPC has refused to hold. Certainly, this Court should not permit the FPC to conclusively presume the answer to such factual questions and then rely upon this bootstrap lifting process as the basis for findings that it lacks jurisdiction.

Nor is there any merit to the FPC's further position that since the curtailment priorities favor the higher priority users any compensation scheme is, by definition, inconsistent with the objectives of end use curtailments. The theory underlying compensation payments is that although a superior end use might entitle one customer to receive gas at the expense of another having an inferior end use, the public interest requires no more than the *transfer of gas.* It does not require the *transfer of money* in an amount equal to the higher cost of substitute fuels needed to replace curtailed natural gas volumes. A higher priority user who really needs the gas should gladly pay the compensation for the assurance of a reliable gas supply and for immunity from the difficulties and expense of converting his gas burning facilities, where such conversion is possible. On the other hand, where conversion is not possible, and the higher priority user can only burn propane, he will be paying the subordinated electric utility the difference between the latter's cost for natural gas and his higher cost for fuel oil or coal, which is much less than the cost of propane. Thus, by paying compensation, the true higher priority user will make a profit!

Yet, the FPC believes that the high priority user should receive both the *available gas* and an *economic windfall* in the form of complete immunity from contributing to any part of the higher cost of alternate fuel needed to replace natural gas and from any part of the conversion cost which electric utilities are incurring for his benefit. AEPCO submits that this is unfair and unreasonable as well as unnecessary to protect the *public interest* instead of promoting the *private interest* of the favored class of users.

In any event, even if the FPC's factual assumptions and policy arguments on this matter were valid, they justify only a finding that the MPSC proposal is lacking in *merit* and do not show lack of *jurisdiction.*

6. *The FPC is seeking from this Court an advisory opinion upon an abstract question of law.* MPSC's Petition for Extraordinary Relief did not propose any specific plan of compensation. Instead, it requested the FPC to merely "initiate a proceeding to establish a method by which the electric utilities are compensated for the additional cost of replacement fuel they are required to use as a result of having been placed in the lowest priority of curtailment" (C.A. App. 3). Thus, the FPC did not have before it, and this Court does not have presented for adjudication, any fixed and final compensation plan. Furthermore, as we have already shown, MPSC's skeletal proposal for a generalized type of compensation plan relates to *only one unique type of compensation plan* which raises wholly different legal issues than the other types of compensation plan which have been proposed. Yet, the FPC is asking this Court to hold it lacks jurisdiction to consider the merits of *any and all* compensation plans.

A reading of the question framed by the FPC (Pet., p. 2) establishes that it is seeking an advisory opinion upon a nebulous and contingent set of alternative compensation plans. Thus, the FPC *does not attempt to define* the "certain circumstances" in which it would allegedly be required[7] by

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[7]Contrary to the FPC's claim, the Court of Appeals properly refused to reach the merits since its judicial function was concluded when it remanded the case to the agency for "findings supported by an adequate record, relating to the inclusion or the failure to include compensation as part of a curtailment plan" (Pet., App., p. 12A; see also Note 8 at 7A). Thus, the court below held only that the FPC did not lack jurisdiction to order or approve a compensation plan and did not compel the agency to impose such plans.

the decision below to impose an *unspecified plurality* of "proposed compensation schemes" whereby high priority customers would pay low priority customers *either* "full or partial compensation" for the higher costs of substitute fuels.

Thus, Petitioner is seeking an advisory opinion from this Court on an abstract question of law which is beyond the scope of its judicial power under Article III of the Constitution. *Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227, 241; *Liberty Warehouse Co. v. Grannis*, 273 U.S. 70, 74; *Postum Cereal Co. v. California Fig Nut Co.*, 272 U.S. 700-701; *New Jersey v. Sargent*, 269 U.S. 328, 330; *Massachusetts v. Mellon*, 262 U.S. 447, 488; *Texas v. Interstate Commerce Commission*, 258 U.S. 158, 162; *United States v. Hamburg-Amerikanische Co.*, 239 U.S. 469, 475; *Muskrat v. United States*, 219 U.S. 346.

7. Even if the petition raises an important question of federal law, which as shown is not the case here, this Court only decides questions of public importance in the context of meaningful litigation and declines to review abstract questions. *The Monrosa, et al. v. Carbon Black Export, Inc.*, 359 U.S. 180, 184; *Atlas Life Insurance Co. v. W.I. Southern, Inc.*, 306 U.S. 563, 571-572.

The FPC seeks here a broad advisory opinion which will have far-reaching consequences beyond the scope of this narrow litigation. If it were to reverse the holding of the Court of Appeals that the FPC must hold hearings on the merits of particular types of compensation plans, this Court would be condemning in a vacuum all conceivable types of compensation plans without any knowledge of the details, impact, or operation of such plans.[8] This Court has a policy

[8]Apart from its other patent improprieties, such a holding by this Court would deprive AEPCO and all proponents of compensation plans of their statutory right to a hearing on the merits of such plans under Sections 4(e) and 5(a), set forth in the Appendix to this Brief. In addition, such a decision would sanction the FPC's failure to afford

of denying requests for such advisory rulings whose implications cannot be foreseen. As held in *Public Service Commission of Utah v. Wycoff Co., Inc.*, 344 U.S. 237, 242-244, this Court:

> . . . must be alert to avoid imposition of the jurisdiction through obtaining futile or premature interventions, especially in the field of public law. A maxim of caution is necessary in the type of litigation that we have here, where a ruling is sought that would reach far beyond the particular case. [at 243]

Furthermore,

> The disagreement must not be nebulous or contingent but must have taken on fixed and final shape so that a court can see what legal issues it is deciding, what effect its decision would have on the adversaries, and some useful purpose to be achieved in deciding them. [at 244]

8. It is essential to apply this rule rigorously where an administrative agency is involved because the reviewing court would otherwise unlawfully usurp administrative functions. In addition, this Court cannot constitutionally act in an administrative or legislative capacity.[9] *Federal Radio Commission v. Nelson Brothers Bond and Mortgage Co.*, 289 U.S. 266, 275; *Keller v. Potomac Electric Power Co.*, 261 U.S. 428, 442-444. Therefore, a question presented for decision which does not reflect the precise conclusions of the agency and the precise findings on which those conclusions

notice of the grounds of decision and an opportunity to submit record evidence *before* it makes an adverse decision and thus deny MPSC, as well as AEPCO, their constitutional right of due process under the Fifth Amendment. *Morgan v. United States*, 304 U.S. 1.

[9]This Court would be required to act in such capacity in order to sustain the FPC's position here that, on the merits, all types of compensation plans are unlawful because of their practical consequences.

are based will not be reviewed. *National Labor Relations Board v. White Swan Co.*, 313 U.S. 23, 26-27.

9. In any event, ". . . a question is improper which is so broad as to admit of one answer under one set of circumstances and a different answer under another." *White v. Johnson*, 282 U.S. 367, 371. This is exactly the case here because of the objectionable generality of the question presented as framed by the FPC and the absence of any precise findings or conclusions directed to the one type of compensation plan actually involved.[10] For, the FPC has not made any findings of fact based on record evidence to support its conclusions of lack of jurisdiction. Instead, it has simply assumed certain facts not in evidence as a basis for its conclusion that the *consequences* of compensation plans would be of such nature as to violate certain prohibitions of the Act, such as Section 4(b). Since these assumptions are challenged, the petition for certiorari raises only disputed questions of fact which are not certworthy. *Southern Power Co. v. North Carolina Public Service Co.*, 263 U.S. 508, 509; *Houston Oil Co. v. Goodrich*, 245 U.S. 440, 441.

In any event, this is a case where the record is not "sufficiently clear and specific" to permit decision of any important federal question of law which may be presented. *Massachusetts v. Painten*, 389 U.S. 569, 561; *Kimbrough v. United States*, 364 U.S. 661; *Mitchell v. Aregon Frozen Foods Co.*, 361 U.S. 231; see concurring opinions in *Wainwright v. City of New Orleans*, 392 U.S. 598. It is noteworthy that in the cited cases certiorari was dismissed as improvidently granted where this deficiency in the record became clear at a later stage.

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[10]Only the third reason for granting the writ adduced by the FPC (Pet., pp. 15-17) is directed towards the basic feature of the MPSC plan which is that high priority users would compensate low priority users. But, this entire line of argument is based on considerations of *fact* and *policy* which show, at most, that such plans should be rejected *on their merits after statutory hearings.*

10. Finally, Petitioner seeks review of a judgment of the Court of Appeals which has remanded the case to the FPC for findings on the issue of the lawfulness and merits of a specific compensation plan. Thus, no final order or judgment has been entered and the case is not yet ripe for review by this Court. *Hamilton-Brown Shoe Co. v. Wolf Brothers*, 240 U.S. 251, 258.

CONCLUSION

For the reasons stated, AEPCO strongly opposes the granting of the Petition for Writ of Certiorari, and urges that it be promptly denied.

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July 14, 1976

APPENDIX

APPENDIX

NATURAL GAS ACT

Section 4(e), 15 U.S.C. § 717c(e):

Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, State commission, or gas distributing company, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect, *and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective.* If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges

by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.(Emphasis added).

Section 5(a), 15 U.S.C. §717d(a):

Whenever the Commission, *after a hearing* had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, *shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: Provided, however,* That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural-gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural-gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates. (Emphasis added).